

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THE TOPLINE CORP.,

Plaintiff,

v.

DYNASTY FOOTWEAR, LTD., et. al,

Defendants.

CASE NO. C06-1126JLR

ORDER

**I. INTRODUCTION**

This matter comes before the court on a motion to dismiss from Defendants Dynasty Footwear Ltd., Seychelles Imports LLC d/b/a BC Footwear, and Jack E. Silvera (Dkt. # 9). For the reasons stated below, the court DENIES Defendants' motion to dismiss.

**II. BACKGROUND**

Plaintiff Topline Corporation ("Topline") alleges that Defendants imported and continue to import shoes made overseas using a manufacturing process claimed in United States Patent No. 7,056,558 in violation of section 271(g) of the Patent Act, 35 U.S.C. § 271(g). Compl. ¶¶ 14, 18.

Defendants seek dismissal under Fed. R. Civ. P. 12(b)(6), contending that Topline's complaint fails to adequately plead that Defendants had notice of their

1 infringement of Topline's patented process. Defendants' argument derives from section  
2 287(b) of the Patent Act, which establishes that a plaintiff must provide notice of  
3 infringement before damages are recoverable under section 271(g). See 35 U.S.C. §  
4 287(b)(2).<sup>1</sup>

### 5 6 III. ANALYSIS

7 On a motion to dismiss, the court construes all well-pleaded allegations of material  
8 fact as true and draws all reasonable inferences in favor of the plaintiff. No. 84  
9 Employer-Teamster Joint Council Pension Trust Fund v. Am. W. Holding Corp., 320  
10 F.3d 920, 931 (9th Cir. 2003); Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d  
11 661, 663 (9th Cir. 2000). A complaint should not be dismissed unless it appears beyond  
12 a doubt that the plaintiff cannot prove any set of facts in support of the claim that would  
13 entitle him or her to relief. No. 84 Employer-Teamster Joint Council, 320 F.3d at 931  
14 (internal citation omitted).

15 Under section 287(b), "notice of infringement means actual knowledge, or receipt  
16 by a person of a written notification, or a combination thereof, of information sufficient  
17 to persuade a reasonable person that it is likely that a product was made by a process  
18 patented in the United States." 35 U.S.C. § 287(b)(5)(A). A complaint alleging that  
19 infringement was willful or knowing necessarily alleges notice of infringement under  
20 section 287. Cf. Sentry Prot. Prods., Inc. v. Eagle Mfg. Co., 400 F.3d 910, 918 (Fed. Cir.  
21 2005) (holding that plaintiff did not waive argument that defendant had notice under  
22 section 287 because notice must necessarily be inferred from a complaint alleging that  
23 infringement was "willful" and "with full knowledge").  
24  
25

---

26  
27 <sup>1</sup> Under 287(b)(2), "[n]o remedies for infringement under section 271(g) of this title shall  
28 be available with respect to any product in the possession of, or in transit to, the person subject to  
liability under such section before that person had notice of infringement with respect to that  
product." 35 U.S.C. § 287(b)(2).

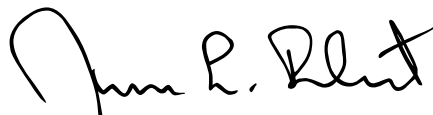
1 Topline's complaint adequately pleads that Defendants both had actual knowledge  
2 and received written notification pursuant to section 287(b). Topline's complaint  
3 identifies a product allegedly manufactured using a patented process and alleges that  
4 Defendants knowingly infringed, willfully infringed, and received notice of Topline's  
5 published patent in a letter dated August 10, 2005. See Compl. ¶¶ 10, 18, 19, 20, 22;  
6 Exs. B, C. While Defendants are correct in observing that Topline's complaint fails to  
7 describe Defendants' specific knowledge of a specific manufacturing process at a specific  
8 overseas facility during a specific time period, the liberal federal standard of notice  
9 pleading does not demand such specificity. See Conley v. Gibson, 355 U.S. 41, 47-48  
10 (1957) ("[T]he Federal Rules of Civil Procedure do not require a claimant to set out in  
11 detail the facts upon which he bases his claim. To the contrary, all the Rules require is a  
12 'short and plain statement of the claim' that will give the defendant fair notice of what the  
13 plaintiff's claim is and the grounds upon which it rests.") (internal citation omitted).

14  
15  
16 In light of Topline's allegations concerning Defendants' knowledge and notice of  
17 infringement, Defendants do not meet their burden to show that the complaint should be  
18 dismissed for failure to state a claim on which relief can be granted.

#### 19 IV. CONCLUSION

20 For the foregoing reasons, the court DENIES Defendants' motion to dismiss  
21 (Dkt. # 9).

22 Dated this 2nd day of January, 2007.

23  
24  
25  
26  
27  
28  
  
JAMES L. ROBART  
United States District Judge